

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE CUSTOMS AND TAX ADMINISTRATION OF THE  
KINGDOM OF DENMARK (SKATTEFORVALTNINGEN)  
TAX REFUND SCHEME LITIGATION

This document relates to case nos.: 19-cv-01785; 19-cv-01867;  
19-cv-01893; 19-cv-01781; 19-cv-01783; 19-cv-01895; 19-cv-  
01904; 19-cv-01869; 19-cv-01922; 19-cv-01870; 19-cv-01791;  
19-cv-01792; 19-cv-01926; 19-cv-01868; 19-cv-01929; 19-cv-  
01806; 19-cv-01906; 19-cv-01808; 18-cv-04833; 19-cv-01898;  
19-cv-01898; 19-cv-01812; 19-cv-01896; 19-cv-01815; 19-cv-  
01924; 19-cv-10713; 19-cv-01866; 19-cv-01794; 19-cv-01865;  
19-cv-01798; 19-cv-01800; 19-cv-01788; 19-cv-01928; 19-cv-  
01803; 19-cv-01801; 19-cv-01894; 19-cv-01810; 19-cv-01809;  
19-cv-01871; 19-cv-01813; 19-cv-01930; 19-cv-01818; 19-cv-  
01931; 19-cv-01918; 19-cv-01873; 18-cv-07828; 18-cv-07827;  
18-cv-07824; 18-cv-07829; 18-cv-04434; 21-cv-05339

MASTER DOCKET

18-md-2865 (LAK)

**PROPOSED SPECIAL VERDICT FORM**

**PLEASE Indicate your Verdict with a Check Mark (✓)**

1. For each of the plans listed below, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence]<sup>1</sup> that the plan submitted reclaim applications containing a material, false statement?

Case No.	Pension Plan	Yes	No
19-cv-01785	Albedo Management LLC Roth 401(K) Plan		
19-cv-01867	Avanix Management LLC Roth 401K Plan		
19-cv-01893	Azalea Pension Plan		

1. Defendants assert that the proper standard for a fraud claim under New York Law is “clear and convincing.” See, e.g., *Elof Hansson USA Inc. v. Santiago*, 2022 WL 2208266, at \*2 (2d Cir. June 21, 2022) (citing *Ferreira v. Arroyo*, 35 N.Y.3d 127, 128 (2020)); *Laugh Factory, Inc. v. Basciano*, 608 F. Supp. 2d 549, 558 (S.D.N.Y. 2009). SKAT’s verdict form concedes that it looks to New York law for every element of its claims. Its suggestion that it may apply New York law to determine elements of its claims but Danish law to determine the standard of proof is unsupported by precedent or common sense. In any event, SKAT is incorrect as a matter of Danish law that the preponderance of the evidence standard applies to fraud claims. Memorandum of Law in Opposition to Plaintiff Skatteforvaltningen’s Memorandum of Law on Issues of Disputed Foreign Law and Choice of Law (ECF No. 1114).

Per its Memorandum of Law on Issues of Disputed Foreign Law and Choice of Law (ECF No. 1071), SKAT contends that, under the relevant Danish law, the standard of proof that should be applied to SKAT’s fraud and aiding and abetting claims is a preponderance of the evidence.

19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan		
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan		
19-cv-01895	Batavia Capital Pension Plan		
19-cv-01904	Calypso Investments Pension Plan		
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan		
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan		
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan		
19-cv-01791	Fairlie Investments LLC Roth 401(K)Plan		
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan		
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan		
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan		
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan		
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan		
19-cv-01906	Michelle Investments Pension Plan		
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan		
18-cv-04833	Raubritter LLC Pension Plan		
19-cv-01898	Remece Investments LLC Pension Plan		
19-cv-01898	RJM Capital Pension Plan		
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan		
19-cv-01896	Routt Capital Pension Plan		
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan		
19-cv-01924	Xiphias LLC Pension Plan		
19-cv-10713	2321 Capital Pension Plan		
19-cv-10713	Bowline Management Pension Plan		
19-cv-10713	California Catalog Company Pension Plan		
19-cv-10713	Clove Pension Plan		
19-cv-10713	Davin Investments Pension Plan		
19-cv-10713	Delvian LLC Pension Plan		
19-cv-10713	DFL Investments Pension Plan		
19-cv-10713	Laegeler Asset Management Pension Plan		
19-cv-10713	Lion Advisory Inc. Pension Plan		

19-cv-10713	Mill River Capital Management Pension Plan		
19-cv-10713	Next Level Pension Plan		
19-cv-10713	Rajan Investments LLC Pension Plan		
19-cv-10713	Spirit on the Water Pension Plan		
19-cv-10713	Traden Investments Pension Plan		
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan		
19-cv-01794	Battu Holdings LLC Roth 401K Plan		
19-cv-01865	Bernina Pension Plan		
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan		
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan		
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan		
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan		
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan		
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan		
19-cv-01809	Plumrose Industries LLC Roth 401K Plan		
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan		
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan		
19-cv-01930	Tarvos Pension Plan		
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan		
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan		
19-cv-01918	Vanderlee Technologies Pension Plan		
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan		
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan		
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan		
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan		
18-cv-07829	Random Holdings 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
21-cv-05339	Alden Investments Pension Plan		
21-cv-05339	AOI Pension Plan		
21-cv-05339	Carrick Holdings Pension Plan		

21-cv-05339	Ganesha Industries Pension Plan		
21-cv-05339	Mazagran Pension Plan		
21-cv-05339	Pleasant Lake Productions Pension Plan		

2. For each of the plans listed below, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that, in issuing refund payments to the plans, Plaintiff justifiably relied on false statements contained in the plan's reclaim applications?

Case No.	Pension Plan	Yes	No
19-cv-01785	Albedo Management LLC Roth 401(K) Plan		
19-cv-01867	Avanix Management LLC Roth 401K Plan		
19-cv-01893	Azalea Pension Plan		
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan		
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan		
19-cv-01895	Batavia Capital Pension Plan		
19-cv-01904	Calypso Investments Pension Plan		
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan		
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan		
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan		
19-cv-01791	Fairlie Investments LLC Roth 401(K)Plan		
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan		
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan		
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan		
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan		
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan		
19-cv-01906	Michelle Investments Pension Plan		
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan		
18-cv-04833	Raubritter LLC Pension Plan		
19-cv-01898	Remece Investments LLC Pension Plan		
19-cv-01898	RJM Capital Pension Plan		
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan		
19-cv-01896	Routt Capital Pension Plan		

19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan		
19-cv-01924	Xiphias LLC Pension Plan		
19-cv-10713	2321 Capital Pension Plan		
19-cv-10713	Bowline Management Pension Plan		
19-cv-10713	California Catalog Company Pension Plan		
19-cv-10713	Clove Pension Plan		
19-cv-10713	Davin Investments Pension Plan		
19-cv-10713	Delvian LLC Pension Plan		
19-cv-10713	DFL Investments Pension Plan		
19-cv-10713	Laegeler Asset Management Pension Plan		
19-cv-10713	Lion Advisory Inc. Pension Plan		
19-cv-10713	Mill River Capital Management Pension Plan		
19-cv-10713	Next Level Pension Plan		
19-cv-10713	Rajan Investments LLC Pension Plan		
19-cv-10713	Spirit on the Water Pension Plan		
19-cv-10713	Traden Investments Pension Plan		
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan		
19-cv-01794	Battu Holdings LLC Roth 401K Plan		
19-cv-01865	Bernina Pension Plan		
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan		
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan		
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan		
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan		
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan		
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan		
19-cv-01809	Plumrose Industries LLC Roth 401K Plan		
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan		
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan		
19-cv-01930	Tarvos Pension Plan		

19-cv-01818	True Wind Investments LLC Roth 401(K) Plan		
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan		
19-cv-01918	Vanderlee Technologies Pension Plan		
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan		
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan		
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan		
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan		
18-cv-07829	Random Holdings 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
21-cv-05339	Alden Investments Pension Plan		
21-cv-05339	AOI Pension Plan		
21-cv-05339	Carrick Holdings Pension Plan		
21-cv-05339	Ganesha Industries Pension Plan		
21-cv-05339	Mazagran Pension Plan		
21-cv-05339	Pleasant Lake Productions Pension Plan		

3. For each of the plans listed below, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] it sustained damages because it justifiably relied on a material, false statement?

Case No.	Pension Plan	Yes	No
19-cv-01785	Albedo Management LLC Roth 401(K) Plan		
19-cv-01867	Avanix Management LLC Roth 401K Plan		
19-cv-01893	Azalea Pension Plan		
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan		
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan		
19-cv-01895	Batavia Capital Pension Plan		
19-cv-01904	Calypso Investments Pension Plan		
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan		
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan		
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan		
19-cv-01791	Fairlie Investments LLC Roth 401(K)Plan		
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan		

19-cv-01926	Green Scale Management LLC Roth 401(K) Plan		
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan		
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan		
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan		
19-cv-01906	Michelle Investments Pension Plan		
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan		
18-cv-04833	Raubritter LLC Pension Plan		
19-cv-01898	Remece Investments LLC Pension Plan		
19-cv-01898	RJM Capital Pension Plan		
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan		
19-cv-01896	Routt Capital Pension Plan		
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan		
19-cv-01924	Xiphias LLC Pension Plan		
19-cv-10713	2321 Capital Pension Plan		
19-cv-10713	Bowline Management Pension Plan		
19-cv-10713	California Catalog Company Pension Plan		
19-cv-10713	Clove Pension Plan		
19-cv-10713	Davin Investments Pension Plan		
19-cv-10713	Delvian LLC Pension Plan		
19-cv-10713	DFL Investments Pension Plan		
19-cv-10713	Laegeler Asset Management Pension Plan		
19-cv-10713	Lion Advisory Inc. Pension Plan		
19-cv-10713	Mill River Capital Management Pension Plan		
19-cv-10713	Next Level Pension Plan		
19-cv-10713	Rajan Investments LLC Pension Plan		
19-cv-10713	Spirit on the Water Pension Plan		
19-cv-10713	Traden Investments Pension Plan		
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan		
19-cv-01794	Battu Holdings LLC Roth 401K Plan		
19-cv-01865	Bernina Pension Plan		
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan		
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan		



19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan		
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan		
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan		
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan		
19-cv-01809	Plumrose Industries LLC Roth 401K Plan		
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan		
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan		
19-cv-01930	Tarvos Pension Plan		
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan		
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan		
19-cv-01918	Vanderlee Technologies Pension Plan		
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan		
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan		
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan		
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan		
18-cv-07829	Random Holdings 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
21-cv-05339	Alden Investments Pension Plan		
21-cv-05339	AOI Pension Plan		
21-cv-05339	Carrick Holdings Pension Plan		
21-cv-05339	Ganesha Industries Pension Plan		
21-cv-05339	Mazagran Pension Plan		
21-cv-05339	Pleasant Lake Productions Pension Plan		

Please answer the following questions only as to the plans for which you answered “yes” to Questions 1, 2, and 3. If there is no plan for which you answered “yes” to all of Questions 1, 2, and 3, go directly to the last page.

**1. Richard Markowitz****a. Fraud Claims**

4. For any of the plans for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz made or caused a false, material statement of fact to be made to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. If you answered “yes” to Question 4, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. If you answered “yes” to Question 5, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz knew that the statement was false or that he acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

7. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the plans were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

8. If you answered “yes” to Question 7, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. If you answered “yes” to Question 8, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**c. Negligent Misrepresentation Claims**

10. For any of the plans for which you answered “yes” to in Questions 1-4 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Richard Markowitz failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

11. If you answered “yes” to Question 10, did Plaintiff prove by a preponderance of the evidence that Richard Markowitz knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

12. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a preponderance of the evidence that Richard Markowitz received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. If you answered “yes” to Question 12, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit Richard Markowitz to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**SKAT’S PROPOSAL FOR QUESTIONS 14 & 15****e. Damages***Compensatory Damages*

14. If you answered “yes” to Questions 6, 9 or 11 what is the dollar amount of compensatory damages Plaintiff is entitled to receive from Richard Markowitz?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Damages</b>
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	\$
19-cv-01867	Avanix Management LLC Roth 401K Plan	\$
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	\$
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01895	Batavia Capital Pension Plan	\$

19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	\$
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	\$
19-cv-01791	Fairlie Investments LLC Roth 401(K)Plan	\$
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	\$
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	\$
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	\$
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	\$
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	\$
18-cv-04833	Raubritter LLC Pension Plan	\$
19-cv-01898	Remece Investments LLC Pension Plan	\$
19-cv-01898	RJM Capital Pension Plan	\$
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	\$
19-cv-01896	Routt Capital Pension Plan	\$
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$
19-cv-10713	2321 Capital Pension Plan	\$
19-cv-10713	Bowline Management Pension Plan	\$
19-cv-10713	California Catalog Company Pension Plan	\$
19-cv-10713	Clove Pension Plan	\$
19-cv-10713	Davin Investments Pension Plan	\$
19-cv-10713	Delvian LLC Pension Plan	\$
19-cv-10713	DFL Investments Pension Plan	\$
19-cv-10713	Laegeler Asset Management Pension Plan	\$
19-cv-10713	Lion Advisory Inc. Pension Plan	\$
19-cv-10713	Mill River Capital Management Pension Plan	\$
19-cv-10713	Next Level Pension Plan	\$
19-cv-10713	Rajan Investments LLC Pension Plan	\$
19-cv-10713	Spirit on the Water Pension Plan	\$
19-cv-10713	Traden Investments Pension Plan	\$

*Unjust Enrichment Damages*

15. If you answered “yes” to Question 13, what is the dollar amount of damages Plaintiff is entitled to receive from Richard Markowitz?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Damages</b>
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	\$
19-cv-01867	Avanix Management LLC Roth 401K Plan	\$
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	\$
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01895	Batavia Capital Pension Plan	\$
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	\$
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	\$
19-cv-01791	Fairlie Investments LLC Roth 401(K)Plan	\$
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	\$
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	\$
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	\$
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	\$
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	\$
18-cv-04833	Raubritter LLC Pension Plan	\$
19-cv-01898	Remece Investments LLC Pension Plan	\$
19-cv-01898	RJM Capital Pension Plan	\$
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	\$
19-cv-01896	Routt Capital Pension Plan	\$
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$
19-cv-10713	2321 Capital Pension Plan	\$
19-cv-10713	Bowline Management Pension Plan	\$
19-cv-10713	Clove Pension Plan	\$

19-cv-10713	Davin Investments Pension Plan	\$
19-cv-10713	Delvian LLC Pension Plan	\$
19-cv-10713	DFL Investments Pension Plan	\$
19-cv-10713	Laegeler Asset Management Pension Plan	\$
19-cv-10713	Lion Advisory Inc. Pension Plan	\$
19-cv-10713	Mill River Capital Management Pension Plan	\$
19-cv-10713	Next Level Pension Plan	\$
19-cv-10713	Rajan Investments LLC Pension Plan	\$
19-cv-10713	Spirit on the Water Pension Plan	\$
19-cv-10713	Traden Investments Pension Plan	\$

### **DEFENDANTS' PROPOSAL FOR QUESTIONS 14 & 15<sup>2</sup>**

#### **e. Damages**

##### *Compensatory Damages*

14. If you answered “yes” to Questions 6, 9 or 11, what is the dollar amount of compensatory damages Richard Markowitz should be required to pay to Plaintiff?
- \$ \_\_\_\_\_

##### *Unjust Enrichment Damages*

15. If you answered “yes” to Question 13, what is the dollar amount of compensatory damages Richard Markowitz should be required to pay to Plaintiff?
- \$ \_\_\_\_\_

##### *Punitive Damages<sup>3</sup>*

16. If you answered “yes” to Questions 6 or 9, do you find that Plaintiff is entitled to punitive damages from Richard Markowitz?

Yes \_\_\_\_\_ No \_\_\_\_\_

---

<sup>2</sup> Defendants propose that this format would apply uniformly to all like questions of damages below (i.e., Questions 28 and 29, 42 and 43, 56 and 57, and 70 and 71) and, should the Court agree, will prepare a fully conformed verdict form.

<sup>3</sup> Defendants reserve all rights to challenge the submission of any claim to the jury until after the close of evidence, and by agreeing to this proposed verdict form, do not concede that there is a basis for punitive damages, or any other claim reflected herein.

17. If you find that Plaintiff is entitled to punitive damages from Richard Markowitz, in what amount?

\$ \_\_\_\_\_

**2. Jocelyn Markowitz****a. Fraud Claims**

18. If you answered “yes” to Questions 1-3 with respect to the Calypso Investments Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz made or caused a false, material statement of fact to be made to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

19. If you answered “yes” to Question 18, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

20. If you answered “yes” to Question 19, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz knew that the statement was false or that she acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

21. If you answered “yes” to Questions 1-3 with respect to the Calypso Investments Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the Calypso Investments Pension Plan were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

22. If you answered “yes” to Question 21, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

23. If you answered “yes” to Question 21, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_



**c. Negligent Misrepresentation Claims**

24. If you answered “yes” to Questions 1-3 and 18 with respect to the Calypso Investments Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Jocelyn Markowitz failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

25. If you answered “yes” to Question 24, did Plaintiff prove by a preponderance of the evidence that Jocelyn Markowitz knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

26. If you answered “yes” to Questions 1-3 with respect to the Calypso Investments Pension Plan, did Plaintiff prove by a preponderance of the evidence that Jocelyn Markowitz received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

27. If you answered “yes” to Question 26, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit Jocelyn Markowitz to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages***Compensatory Damages*

28. If you answered “yes” to Questions 20, 23, or 25 what is the dollar amount of compensatory damages Plaintiff is entitled to receive from Jocelyn Markowitz?

\$ \_\_\_\_\_

*Unjust Enrichment Damages*

29. If you answered “yes” to Question 27, what is the dollar amount of damages Plaintiff is entitled to receive from Jocelyn Markowitz?

\$ \_\_\_\_\_

*Punitive Damages*

30. If you answered “yes” to Questions 20 or 23, do you find that Plaintiff is entitled to punitive damages from Jocelyn Markowitz?

Yes \_\_\_\_\_ No \_\_\_\_\_

31. If you find that Plaintiff is entitled to punitive damages from Jocelyn Markowitz, in what amount?

\$ \_\_\_\_\_

**3. John van Merkensteijn**

**a. Fraud Claims**

32. For any of the plans for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn made or caused a false, material statement of fact to be made to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

33. If you answered “yes” to Question 32, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

34. If you answered “yes” to Question 33, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn knew that the statement was false or that he acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

35. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the plans were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

36. If you answered “yes” to Question 35, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

37. If you answered “yes” to Question 36, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**c. Negligent Misrepresentation Claims**

38. For any of the plans for which you answered “yes” to in Questions 1-3 and 32 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that John van Merkensteijn failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

39. If you answered “yes” to Question 38, did Plaintiff prove by a preponderance of the evidence that John van Merkensteijn knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

40. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a preponderance of the evidence that John van Merkensteijn received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

41. If you answered “yes” to Question 40, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit John van Merkensteijn to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages***Compensatory Damages*

42. If you answered “yes” to Questions 34, 37, or 39 what is the dollar amount of compensatory damages Plaintiff is entitled to receive from John van Merkensteijn?

Case No.	Pension Plan	Damages
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	\$
19-cv-01794	Battu Holdings LLC Roth 401K Plan	\$
19-cv-01865	Bernina Pension Plan	\$
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	\$
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	\$
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	\$
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	\$

19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan	\$
19-cv-01894	Omineca Pension Plan	\$
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan	\$
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	\$
18-cv-04833	Raubritter LLC Pension Plan	\$
19-cv-01911	Remece Investments LLC Pension Plan	\$
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	\$
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	\$
19-cv-01930	Tarvos Pension Plan	\$
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	\$
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	\$
19-cv-01918	Vanderlee Technologies Pension Plan	\$
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$
19-cv-10713	2321 Capital Pension Plan	\$
19-cv-10713	Bowline Management Pension Plan	\$
19-cv-10713	California Catalog Company Pension Plan	\$
19-cv-10713	Clove Pension Plan	\$
19-cv-10713	Davin Investments Pension Plan	\$
19-cv-10713	Delvian LLC Pension Plan	\$
19-cv-10713	DFL Investments Pension Plan	\$
19-cv-10713	Laegeler Asset Management Pension Plan	\$
19-cv-10713	Lion Advisory Inc. Pension Plan	\$
19-cv-10713	Mill River Capital Management Pension Plan	\$
19-cv-10713	Next Level Pension Plan	\$
19-cv-10713	Rajan Investments LLC Pension Plan	\$
19-cv-10713	Spirit on the Water Pension Plan	\$
19-cv-10713	Traden Investments Pension Plan	\$

*Unjust Enrichment Damages*

43. If you answered “yes” to Questions 41, what is the dollar amount of damages Plaintiff is entitled to receive from John van Merkensteijn?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Damages</b>
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	\$
19-cv-01794	Battu Holdings LLC Roth 401K Plan	\$
19-cv-01865	Bernina Pension Plan	\$
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	\$
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	\$
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	\$
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	\$
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan	\$
19-cv-01894	Omineca Pension Plan	\$
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan	\$
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	\$
18-cv-04833	Raubritter LLC Pension Plan	\$
19-cv-01911	Remece Investments LLC Pension Plan	\$
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	\$
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	\$
19-cv-01930	Tarvos Pension Plan	\$
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	\$
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	\$
19-cv-01918	Vanderlee Technologies Pension Plan	\$
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$
19-cv-10713	2321 Capital Pension Plan	\$
19-cv-10713	Bowline Management Pension Plan	\$
19-cv-10713	Clove Pension Plan	\$
19-cv-10713	Davin Investments Pension Plan	\$
19-cv-10713	Delvian LLC Pension Plan	\$

19-cv-10713	DFL Investments Pension Plan	\$
19-cv-10713	Laegeler Asset Management Pension Plan	\$
19-cv-10713	Lion Advisory Inc. Pension Plan	\$
19-cv-10713	Mill River Capital Management Pension Plan	\$
19-cv-10713	Next Level Pension Plan	\$
19-cv-10713	Rajan Investments LLC Pension Plan	\$
19-cv-10713	Spirit on the Water Pension Plan	\$
19-cv-10713	Traden Investments Pension Plan	\$

*Punitive Damages*

44. If you answered “yes” to Questions 34 or 37, do you find that Plaintiff is entitled to punitive damages from John van Merkensteijn?

Yes \_\_\_\_\_ No \_\_\_\_\_

45. If you find that Plaintiff is entitled to punitive damages from John van Merkensteijn, in what amount?

\$ \_\_\_\_\_

**4. Elizabeth van Merkensteijn****a. Fraud Claims**

46. If you answered “yes” to Questions 1-3 with respect to the Azalea Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn made or caused a false, material statement of fact to be made to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

47. If you answered “yes” to Question 46, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

48. If you answered “yes” to Question 47, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn knew that the statement was false or that she acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

49. If you answered “yes” to Questions 1-3 with respect to the Azalea Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the Azalea Pension Plan were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

50. If you answered “yes” to Question 49, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

51. If you answered “yes” to Question 50, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_



**c. Negligent Misrepresentation Claims**

52. If you answered “yes” to Questions 1-3 and 46 with respect to the Azalea Pension Plan, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Elizabeth van Merkensteijn failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

53. If you answered “yes” to Question 52, did Plaintiff prove by a preponderance of the evidence that Elizabeth van Merkensteijn knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

54. If you answered “yes” to Questions 1-3 with respect to the Azalea Pension Plan, did Plaintiff prove by a preponderance of the evidence that Elizabeth van Merkensteijn received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

55. If you answered “yes” to Question 54, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit Elizabeth van Merkensteijn to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages***Compensatory Damages*

56. If you answered “yes” to Questions 48, 48 or 51, what is the dollar amount of compensatory damages Plaintiff is entitled to receive from Elizabeth van Merkensteijn?

\$ \_\_\_\_\_

*Unjust Enrichment Damages*

57. If you answered “yes” to Questions 55, what is the dollar amount of damages Plaintiff is entitled to receive from Elizabeth van Merkensteijn?

\$ \_\_\_\_\_

*Punitive Damages*

58. If you answered “yes” to Questions 48 or 48, do you find that Plaintiff is entitled to punitive damages from Elizabeth van Merkensteijn?

Yes \_\_\_\_\_ No \_\_\_\_\_

59. If you find that Plaintiff is entitled to punitive damages from Elizabeth van Merkensteijn, in what amount?

\$ \_\_\_\_\_

**5. Robert Klugman****a. Fraud Claims**

60. For any of the plans for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman made or caused a false, material statement of fact to be made to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

61. If you answered “yes” to Question 60, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

62. If you answered “yes” to Question 61, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman knew that the statement was false or that he acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

63. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the plans were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

64. If you answered “yes” to Question 63, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

65. If you answered “yes” to Question 64, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**c. Negligent Misrepresentation Claims**

66. For any of the plans for which you answered “yes” to in Questions 1-3 and 60 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Robert Klugman failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

67. If you answered “yes” to Question 66, did Plaintiff prove by a preponderance of the evidence that Robert Klugman knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

68. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a preponderance of the evidence that Robert Klugman received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

69. If you answered “yes” to Question 68, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit Robert Klugman to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages***Compensatory Damages*

70. If you answered “yes” to Questions 62, 65 or 67 what is the dollar amount of compensatory damages Plaintiff is entitled to receive from Robert Klugman?

Case No.	Pension Plan	Damages
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan	\$
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	\$
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	\$
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01794	Battu Holdings LLC Roth 401K Plan	\$
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	\$

19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	\$
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	\$
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	\$
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan	\$
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan	\$
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	\$
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	\$
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	\$
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan	\$
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	\$
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	\$
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	\$
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan,	\$
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	\$
19-cv-01809	Pinax Holdings LLC Roth 401(K) Plan	\$
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	\$
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	\$
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	\$
18-cv-07829	Random Holdings 401K Plan	\$
18-cv-04434	The Stor Capital Consulting LLC 401K Plan	\$
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	\$
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	\$
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	\$
19-cv-01918	Vanderlee Technologies Pension Plan	\$

*Unjust Enrichment Damages*

71. If you answered “yes” to Questions 69, what is the dollar amount of damages Plaintiff is entitled to receive from Robert Klugman?

Case No.	Pension Plan	Damages
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan	\$

19-cv-01785	Albedo Management LLC Roth 401(K) Plan	\$
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	\$
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01794	Battu Holdings LLC Roth 401K Plan	\$
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	\$
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	\$
19-cv-01788	Dicot Technologies LLC Roth 401(K)Plan	\$
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	\$
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan	\$
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan	\$
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	\$
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	\$
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	\$
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan	\$
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	\$
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	\$
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	\$
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan,	\$
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	\$
19-cv-01809	Pinax Holdings LLC Roth 401(K) Plan	\$
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	\$
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	\$
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	\$
18-cv-07829	Random Holdings 401K Plan	\$
18-cv-04434	The Stor Capital Consulting LLC 401K Plan	\$
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	\$
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	\$
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	\$
19-cv-01918	Vanderlee Technologies Pension Plan	\$

*Punitive Damages*

72. If you answered “yes” to Questions 62 or 65, do you find that Plaintiff is entitled to punitive damages from Robert Klugman?

Yes \_\_\_\_\_ No \_\_\_\_\_

73. If you find that Plaintiff is entitled to punitive damages from Robert Klugman, in what amount?

\$ \_\_\_\_\_

**6. Michael Ben-Jacob****a. Fraud Claims**

74. For each of the plans listed below for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob made or caused a false, material statement of fact to be made to Plaintiff?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Yes</b>	<b>No</b>
19-cv-01785	Albedo Management LLC Roth 401(K) Plan		
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan		
19-cv-01794	Battu Holdings LLC Roth 401K Plan		
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan		
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01809	Plumrose Industries LLC Roth 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
19-cv-01918	Vanderlee Technologies Pension Plan		

75. For any of the plans for which you answered “yes” to in Question 74, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

76. If you answered “yes” to Question 75, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob knew that the statement was false or that he acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Negligent Misrepresentation Claims**

77. For any of the plans for which you answered “yes” to in Questions 1-3 and 74 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_



78. For any of the plans for which you answered “yes” to for Question 77, did Plaintiff prove by a preponderance of the evidence that Ben-Jacob knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**c. Aiding and Abetting Fraud Claims**

79. For each of the plans listed below for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the plan was procured by fraud perpetrated by someone else?

Case No.	Pension Plan	Yes	No
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan		
19-cv-01785	Albedo Management LLC Roth 401(K) Plan		
19-cv-01867	Avanix Management LLC Roth 401K Plan		
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan		
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan		
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan		
19-cv-01794	Battu Holdings LLC Roth 401K Plan		
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan		
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan		
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan		
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan		
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan		
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan,		
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan		
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan		
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan		
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan		
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan		
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan		
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan		
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan		
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan		

19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan		
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan		
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan		
19-cv-01809	Plumrose Industries LLC Roth 401K Plan		
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan		
19-cv-01896	Routt Capital Pension Plan		
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan		
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan		
18-cv-07829	Random Holdings 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan		
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan		
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan,		
19-cv-01918	Vanderlee Technologies Pension Plan		
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan		
19-cv-10713	2321 Capital Pension Plan		
19-cv-10713	Bowline Management Pension Plan		
19-cv-10713	California Catalog Company Pension Plan		
19-cv-10713	Clove Pension Plan		
19-cv-10713	Davin Investments Pension Plan		
19-cv-10713	Delvian LLC Pension Plan		
19-cv-10713	DFL Investments Pension Plan		
19-cv-10713	Laegeler Asset Management Pension Plan		
19-cv-10713	Lion Advisory Inc. Pension Plan		
19-cv-10713	Mill River Capital Management Pension Plan		
19-cv-10713	Next Level Pension Plan		
19-cv-10713	Rajan Investments LLC Pension Plan		
18-cv-04833	Raubritter LLC Pension Plan		
19-cv-10713	Spirit on the Water Pension Plan		
19-cv-10713	Traden Investments Pension Plan		

80. For any of the plans for which you answered “yes” to in Question 79, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob knew or consciously avoided knowing that the reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

81. If you answered “yes” to Question 80, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that Ben-Jacob provided substantial assistance in the submission of fraudulent reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Civil Conspiracy Claims**

82. For any of the plans listed below for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a preponderance of the evidence that Ben-Jacob entered into an agreement with at least one other individual for the plans to submit reclaim applications that contained the material, false statement?

Case No.	Pension Plan	Yes	No
21-cv-05339	Alden Investments Pension Plan		
21-cv-05339	AOI Pension Plan		
21-cv-05339	Carrick Holdings Pension Plan		
21-cv-05339	Ganesha Industries Pension Plan		
21-cv-05339	Mazagran Pension Plan		
21-cv-05339	Pleasant Lake Productions Pension Plan		
19-cv-10713	2321 Capital Pension Plan		
19-cv-01893	Azalea Pension Plan		
19-cv-01895	Batavia Capital Pension Plan		
19-cv-01865	Bernina Pension Plan		
19-cv-10713	Bowline Management Pension Plan		
19-cv-10713	California Catalog Company Pension Plan		
19-cv-01904	Calypso Investments Pension Plan		
19-cv-10713	Clove Pension Plan		
19-cv-10713	Davin Investments Pension Plan		
19-cv-10713	Delvian LLC Pension Plan		
19-cv-10713	DFL Investments Pension Plan		
19-cv-10713	Laegeler Asset Management Pension Plan		
19-cv-10713	Lion Advisory Inc. Pension Plan		

19-cv-01906	Michelle Investments Pension Plan		
19-cv-10713	Mill River Capital Management Pension Plan		
19-cv-10713	Next Level Pension Plan		
19-cv-10713	Rajan Investments LLC Pension Plan		
18-cv-04833	Raubritter LLC Pension Plan		
19-cv-01898	Remece Investments LLC Pension Plan		
19-cv-01898	RJM Capital Pension Plan		
19-cv-10713	Spirit on the Water Pension Plan		
19-cv-01930	Tarvos Pension Plan		
19-cv-10713	Traden Investments Pension Plan		
19-cv-01924	Xiphias LLC Pension Plan		

Yes \_\_\_\_\_ No \_\_\_\_\_

83. If you answered “yes” to Question 82, did Plaintiff prove by a preponderance of the evidence that any of the individuals who entered into the agreement committed an overt act to further the agreement?

Yes \_\_\_\_\_ No \_\_\_\_\_

84. If you answered “yes” to Question 83, did Plaintiff prove by a preponderance of the evidence that Ben-Jacob conspired with others with the intent to further its purpose of submitting reclaim applications that contained the material, false statement?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages**

*Compensatory Damages*

85. For any plan that you answered “yes” to for Questions 76, 78, 81 or 84, what is the dollar amount of compensatory damages Plaintiff is entitled to receive from Ben-Jacob?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Damages</b>
21-cv-05339	Alden Investments Pension Plan	\$
21-cv-05339	AOI Pension Plan	\$
21-cv-05339	Carrick Holdings Pension Plan	\$
21-cv-05339	Ganesha Industries Pension Plan	\$
21-cv-05339	Mazagran Pension Plan	\$

21-cv-05339	Pleasant Lake Productions Pension Plan	\$
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan	\$
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	\$
19-cv-01867	Avanix Management LLC Roth 401K Plan	\$
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	\$
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	\$
19-cv-01794	Battu Holdings LLC Roth 401K Plan	\$
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	\$
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	\$
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	\$
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	\$
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	\$
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan,	\$
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan	\$
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan	\$
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	\$
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	\$
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	\$
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	\$
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan	\$
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	\$
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	\$
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	\$
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan	\$
19-cv-01894	Omineca Pension Plan	\$
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	\$
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan	\$
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	\$
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	\$
19-cv-01896	Routt Capital Pension Plan	\$
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	\$

19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	\$
18-cv-07829	Random Holdings 401K Plan	\$
18-cv-04434	The Stor Capital Consulting LLC 401K Plan	\$
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	\$
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	\$
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan,	\$
19-cv-01918	Vanderlee Technologies Pension Plan	\$
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	\$
19-cv-10713	2321 Capital Pension Plan	\$
19-cv-01893	Azalea Pension Plan	\$
19-cv-01895	Batavia Capital Pension Plan	\$
19-cv-01865	Bernina Pension Plan	\$
19-cv-10713	Bowline Management Pension Plan	\$
19-cv-10713	California Catalog Company Pension Plan	\$
19-cv-01904	Calypso Investments Pension Plan	\$
19-cv-10713	Clove Pension Plan	\$
19-cv-10713	Davin Investments Pension Plan	\$
19-cv-10713	Delvian LLC Pension Plan	\$
19-cv-10713	DFL Investments Pension Plan	\$
19-cv-10713	Laegeler Asset Management Pension Plan	\$
19-cv-10713	Lion Advisory Inc. Pension Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-10713	Mill River Capital Management Pension Plan	\$
19-cv-10713	Next Level Pension Plan	\$
19-cv-10713	Rajan Investments LLC Pension Plan	\$
18-cv-04833	Raubritter LLC Pension Plan	\$
19-cv-01898	Remece Investments LLC Pension Plan	\$
19-cv-01898	RJM Capital Pension Plan	\$
19-cv-10713	Spirit on the Water Pension Plan	\$
19-cv-01930	Tarvos Pension Plan	\$
19-cv-10713	Traden Investments Pension Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$

*Punitive Damages*

86. If you answered “yes” to Question 76 or 81, do you find that Plaintiff is entitled to punitive damages from Ben-Jacob?

Yes \_\_\_\_\_ No \_\_\_\_\_

87. If you find that Plaintiff is entitled to punitive damages from Ben-Jacob, in what amount?

\$ \_\_\_\_\_

**7. Pension Plan Defendants<sup>4</sup>**

**a. Fraud Claims**

88. For each of the plans listed below for which you answered “yes” to in Questions 1-3, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans made or caused a false, material statement of fact to be made to Plaintiff?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Yes</b>	<b>No</b>
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan		
19-cv-01867	Avanix Management LLC Roth 401K Plan		
19-cv-01893	Azalea Pension Plan		
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan		
19-cv-01895	Batavia Capital Pension Plan		
19-cv-01865	Bernina Pension Plan		
19-cv-01904	Calypso Investments Pension Plan		
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan		
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan		
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan		
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan		
19-cv-01906	Michelle Investments Pension Plan		
19-cv-01894	Omineca Pension Plan		
19-cv-01911	Remece Investments LLC Pension Plan		
19-cv-01898	RJM Capital Pension Plan		
19-cv-01896	Routt Capital Pension Plan		
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan		
19-cv-01930	Tarvos Pension Plan		
18-cv-07829	Random Holdings 401K Plan		
18-cv-04434	The Stor Capital Consulting LLC 401K Plan		
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan		
19-cv-01924	Xiphias LLC Pension Plan		

---

4. SKAT removed sections on (1) alter ego liability, (2) partnership liability, and (3) principal-agent liability with the understanding that such topics will be included in the jury instructions.



89. For any of the plans for which you answered “yes” to in Question 88, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans made or caused the statement to be made in order to induce Plaintiff to rely upon it?

Yes \_\_\_\_\_ No \_\_\_\_\_

90. If you answered “yes” to Question 89, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans knew that the statement was false or that the pension plans acted recklessly without regard to whether it was true or false?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Aiding and Abetting Fraud Claims**

91. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that refund payments that were paid to the pension plans were procured by fraud perpetrated by someone else?

Yes \_\_\_\_\_ No \_\_\_\_\_

92. If you answered “yes” to Question 91, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans knew or consciously avoided knowing that reclaim applications were fraudulent?

Yes \_\_\_\_\_ No \_\_\_\_\_

93. If you answered “yes” to Question 92, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans provided substantial assistance to the commission of the fraud?

Yes \_\_\_\_\_ No \_\_\_\_\_

**c. Negligent Misrepresentation Claims**

94. For any of the plans for which you answered “yes” to in Questions 1-3 and 88 above, did Plaintiff prove by a [preponderance of the evidence/clear and convincing evidence] that the pension plans failed to use reasonable care to ensure that the statements in the reclaim applications were correct?

Yes \_\_\_\_\_ No \_\_\_\_\_

95. If you answered “yes” to Question 94, did Plaintiff prove by a preponderance of the evidence that the pension plans knew, or reasonably should have known, that a person in Plaintiff’s position would rely on the false statements in the reclaim applications?

Yes \_\_\_\_\_ No \_\_\_\_\_

**d. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

96. For any of the plans for which you answered “yes” to in Questions 1-3 above, did Plaintiff prove by a preponderance of the evidence that the pension plans received money belonging to Plaintiff?

Yes \_\_\_\_\_ No \_\_\_\_\_

97. If you answered “yes” to Question 96, did Plaintiff prove by a preponderance of the evidence that equity and good conscience do not permit the pension plans to retain that money?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Damages***Compensatory Damages*

98. For each of the plans listed below, for any plan that you answered yes to for Questions 90, 93 or 95, what is the dollar amount of compensatory damages Plaintiff is entitled to receive from that pension plan?

<b>Case No.</b>	<b>Pension Plan</b>	<b>Damages</b>
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan	\$
19-cv-01867	Avanix Management LLC Roth 401K Plan	\$
19-cv-01893	Azalea Pension Plan	\$
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	\$
19-cv-01895	Batavia Capital Pension Plan	\$
19-cv-01865	Bernina Pension Plan	\$
19-cv-01904	Calypso Investments Pension Plan	\$
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	\$
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan	\$
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	\$
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01894	Omineca Pension Plan	\$
19-cv-01911	Remece Investments LLC Pension Plan	\$
19-cv-01898	RJM Capital Pension Plan	\$
19-cv-01896	Routt Capital Pension Plan	\$
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	\$

19-cv-01930	Tarvos Pension Plan	\$
18-cv-07829	Random Holdings 401K Plan	\$
18-cv-04434	The Stor Capital Consulting LLC 401K Plan	\$
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$

*Unjust Enrichment Damages*

99. For each of the plans listed below, for any plan that you answered yes to for Question 97, what is the dollar amount of damages Plaintiff is entitled to receive from that pension plan?

Case No.	Pension Plan	Damages
18-cv-07828	Aerovane Logistics LLC Roth 401K Plan	\$
19-cv-01867	Avanix Management LLC Roth 401K Plan	\$
19-cv-01893	Azalea Pension Plan	\$
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	\$
19-cv-01895	Batavia Capital Pension Plan	\$
19-cv-01865	Bernina Pension Plan	\$
19-cv-01904	Calypso Investments Pension Plan	\$
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	\$
18-cv-07827	Edgepoint Capital LLC Roth 401K Plan	\$
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	\$
18-cv-07824	Headsail Manufacturing LLC Roth 401K Plan	\$
19-cv-01906	Michelle Investments Pension Plan	\$
19-cv-01894	Omineca Pension Plan	\$
19-cv-01911	Remece Investments LLC Pension Plan	\$
19-cv-01898	RJM Capital Pension Plan	\$
19-cv-01896	Roult Capital Pension Plan	\$
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	\$
19-cv-01930	Tarvos Pension Plan	\$
18-cv-07829	Random Holdings 401K Plan	\$
18-cv-04434	The Stor Capital Consulting LLC 401K Plan	\$
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	\$
19-cv-01924	Xiphias LLC Pension Plan	\$

*Punitive Damages*

100. If you answered “yes” to Questions 90 or 93, do you find that Plaintiff is entitled to punitive damages from the pension plans?

Yes \_\_\_\_\_ No \_\_\_\_\_

101. If you find that Plaintiff is entitled to punitive damages from the pension plans, in what amount?

\$ \_\_\_\_\_

## 8. Affirmative Defenses

Please answer this section only if you found that any of the Defendants may be liable for at least one of the claims. If you have not found that any of the Defendants may be liable for any of the claims, please skip this section and turn to the final page of this Verdict Form.

### a. Statute of Limitations<sup>5</sup>

102. Have the Defendants proven by a preponderance of the evidence that Plaintiff knew or should have known before January 1, 2015 all of its then-available claims against that Defendant?

Michael Ben-Jacob	Yes	_____	No	_____
Richard Markowitz	Yes	_____	No	_____
Jocelyn Markowitz	Yes	_____	No	_____
Markowitz-Affiliated Pension Plans	Yes	_____	No	_____
John Van Merkensteijn	Yes	_____	No	_____
Elizabeth Van Merkensteijn	Yes	_____	No	_____
Van Merkensteijn-Affiliated Pension Plans	Yes	_____	No	_____
Robert Klugman	Yes	_____	No	_____
Klugman-Affiliated Pension Plans	Yes	_____	No	_____

*November 2019 Complaint (this question is not applicable to Robert Klugman)*

103. Have the Defendants proven by a preponderance of the evidence that Plaintiff agreed to file claims against Defendants before March 1, 2019?

Yes \_\_\_\_\_ No \_\_\_\_\_

---

5. SKAT disputes that there is an evidentiary basis for the jury to find any statute of limitations defense and reserves its right to argue that the Court should not instruct the jury on such a defense or include any questions on it in the verdict form.

Defendants disagree and believe that questions concerning the availability and scope of this defense are properly resolved following the trial presentation and with appropriate instructions to the jury.

*Klugman*

104. Has Defendant Klugman proven by a preponderance of the evidence that Plaintiff knew or should have known all of its then-available claims against him before May 3, 2015?

Yes \_\_\_\_\_ No \_\_\_\_\_

105. Has Defendant Klugman proven by a preponderance of the evidence that Plaintiff knew or should have known all of its then-available claims against him before February 18, 2016?

Yes \_\_\_\_\_ No \_\_\_\_\_

106. Has Defendant Klugman proven by a preponderance of the evidence that Plaintiff knew or should have known all of its then-available claims against him before April 26, 2017?

Yes \_\_\_\_\_ No \_\_\_\_\_

*Michael Ben-Jacob*

107. Has Defendant Michael Ben-Jacob proven by a preponderance of the evidence that Plaintiff agreed to file claims against him by July 17, 2018?

Yes \_\_\_\_\_ No \_\_\_\_\_

108. Has Defendant Ben-Jacob proven by a preponderance of the evidence that Plaintiff discovered or could have discovered with reasonable diligence by June 16, 2019 all of its then-available claims against Defendant Ben-Jacob asserted in its June 2021 Complaint?

Yes \_\_\_\_\_ No \_\_\_\_\_

**b. Assumption of Risk<sup>6</sup>**

109. Have the Defendants proven by a preponderance of the evidence that Plaintiff knew and fully understood, or should have known and fully understood, that Defendants were not entitled to the dividend withholding tax refunds they claimed?

Yes \_\_\_\_\_ No \_\_\_\_\_

---

6. SKAT disputes that it is appropriate to charge the jury on an assumption of risk defense. But in any event, assumption of risk is not a complete defense to SKAT's claims. *See* CPLR 1411 ("the culpable conduct attributable to the claimant . . . including contributory negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished" proportionately). It is also not a defense to SKAT's fraud claims. It is only applicable to SKAT's negligent misrepresentation claims and the same as the comparative negligence defense below, if the jury answers yes, it will have to apportion fault between the parties. As such, if defendants intend to include an assumption of risk defense, it should be combined with the comparative negligence questions such that the jury is asked to make the comparative causation determination only once.

Defendants disagree and believe that questions concerning the availability and scope of this defense are properly resolved following the trial presentation and with appropriate instructions to the jury.

**c. Failure To Mitigate<sup>7</sup>**

110. Have the Defendants proven by a preponderance of the evidence that Plaintiff failed to mitigate, minimize, and avoid the damages it is seeking in this case[LJI]?

Yes \_\_\_\_\_ No \_\_\_\_\_

111. Of the total amount of damages you would award to Plaintiff, what percentage should be deducted based on Plaintiff's failure to mitigate?

\_\_\_\_\_ %

**d. Laches<sup>8</sup>**

112. Have the Defendants proven by a preponderance of the evidence that (1) Plaintiff inexcusably and unreasonably delayed asserting its claims despite having the opportunity to bring its claims sooner; (2) the Defendants lacked knowledge or notice that Plaintiff would assert its claims; and (3) the Defendants would be prejudiced or injured if Plaintiff were granted the relief it seeks?

Yes \_\_\_\_\_ No \_\_\_\_\_

**e. Comparative Negligence**

If you found any of the Defendants liable on Negligent Misrepresentation claims (Sections 1(c), 2(c), 3(c), 4(c), 5(c), 6(c), and 7(c)), please answer the following questions.

113. Have the Defendants proven by a preponderance of the evidence that Plaintiff was negligent in making payments to Defendants' pension plans?

Yes \_\_\_\_\_ No \_\_\_\_\_

---

7. SKAT contends that the failure to mitigate defense is inapplicable to the facts before the Court. But in any event, failure to mitigate is not a complete defense to SKAT's claims. *See Resolution Trust Corp. v. Mass. Mut. Life Ins. Co.*, 93 F. Supp. 2d 300, 310 (W.D.N.Y. 2000) ("The duty to mitigate damages, of course, is implicit within the comparative negligence framework.").

Defendants disagree and believe that questions concerning the availability and scope of this defense are properly resolved following the trial presentation and with appropriate instructions to the jury.

8. SKAT contends that the defense of laches is not applicable to SKAT's claims because SKAT does not seek any equitable relief. *See Reeps v. BMW of N. Am., LLC*, 94 A.D.3d 475, 476 (1st Dept. 2012) ("the defense of laches is unavailable . . . since this is an action at law, in which no form of equitable relief is sought"). SKAT also disputes that there is an evidentiary basis to charge the jury on a laches defense.

Defendants disagree that the defense of laches is not applicable to SKAT's claims, *see Connecticut Gen. Life Ins. Co. v. Biohealth Lab'ys, Inc.*, 988 F.3d 127 (2d Cir. 2021) (construing CT law) (confirming the availability of laches defenses to unjust enrichment claims), and disagrees that there is insufficient evidentiary basis to charge the jury on a laches defense.

114. Have the Defendants proven by a preponderance of the evidence that Plaintiff's negligence was a substantial factor in bringing about its own injuries?

Yes \_\_\_\_\_ No \_\_\_\_\_

115. Indicate the percentage of fault of Plaintiff, Solo/Sanjay Shah, and each Defendant:

SKAT	_____ %
Solo/Shah	_____ %
Michael Ben-Jacob	_____ %
Robert Klugman	_____ %
Klugman-Affiliated Pension Plans	_____ %
Richard Markowitz	_____ %
Jocelyn Markowitz	_____ %
Markowitz-Affiliated Pension Plans	_____ %
John Van Merkensteijn	_____ %
Elizabeth Van Merkensteijn	_____ %
Van Merkensteijn-Affiliated Pension Plans	_____ %
<i>Total</i>	_____ %

(Total Must Equal 100)

**f. Revenue Rule<sup>9</sup>**

116. If you awarded Plaintiff damages, do you find that SKAT's claims seek to recover taxes that any defendant owed to Denmark?

Yes \_\_\_\_\_ No \_\_\_\_\_

---

9. SKAT disputes that this is an appropriate question for the jury.



**g. New York General Obligations Law § 15-108**

117. For the trading that took place on behalf of each of the plans listed below between 2012 and 2014—and not for any other plan or time period—indicate the percentage of fault for Plaintiff’s injury for each of the following individuals:

<b>Case No.</b>	<b>Pension Plan</b>
19-cv-10713	2321 Capital Pension Plan
19-cv-10713	Bowline Management Pension Plan
19-cv-10713	California Catalog Company Pension Plan
19-cv-10713	Clove Pension Plan
19-cv-10713	Davin Investments Pension Plan
19-cv-10713	Delvian LLC Pension Plan
19-cv-10713	DFL Investments Pension Plan
19-cv-10713	Laegeler Asset Management Pension Plan
19-cv-10713	Lion Advisory Inc. Pension Plan
19-cv-10713	Mill River Capital Management Pension Plan
19-cv-10713	Next Level Pension Plan
19-cv-10713	Rajan Investments LLC Pension Plan
19-cv-10713	Spirit on the Water Pension Plan
19-cv-10713	Traden Investments Pension Plan
19-cv-01906	Michelle Investments Pension Plan
19-cv-01924	Xiphias LLC Pension Plan
18-cv-04833	Raubritter LLC Pension Plan
19-cv-01898	Remece Investments LLC Pension Plan

Solo/Shah	_____ %
Richard Markowitz	_____ %
John Van Merkensteijn	_____ %
Jerome Lhote	_____ %
Matthew Stein	_____ %
Michael Ben-Jacob	_____ %
<i>Total</i>	_____ %

(Total Must Equal 100)